

REMARKS

The following remarks are submitted to be fully responsive to the Official Action dated April 4, 2007. This response is thus timely submitted within the three-month shortened statutory period for response. Should any fees be required, the Commissioner is authorized to charge Kagan Binder Deposit Account No. 50-1775 and thereafter notify us of the same. Reconsideration of all outstanding grounds of the rejection and allowance of the subject application are believed in order and respectfully requested.

Claims 1-34 were pending in the above-identified patent application. Claims 1-34 were rejected by the Examiner. Applicants submit that the claims are presently in a condition for allowance.

The Official Action provided that the information disclosure statement filed 1/20/2004 set forth references that are not in English and did not include a concise explanation of the relevance of the references by an individual designated in 37 CFR 1.56(c) as most knowledgeable about the content of each reference. Although there were no English abstracts provided with the three subject references, a concise explanation of the references may be made by examining the figures. With regard to DE 29708050, the reference shows a platform that is able to be stabilized (Fig. 1) and that may be attached to a heart by sutures extending around a blood vessel on the heart (Fig.11). The reference EPO 0432560A2 shows a device that may possibly be used for cardiac surgery that includes catheter ports (Fig. 1) and components that apparently allow for pinching, grabbing or cutting of tissue at the distal end of the device (Figs. 1-4). The reference G 9004513.0 shows a circular device that apparently is sutured to tissue (Figs. 4, 5), possibly heart tissue, and that provides a central open space for surgery to be performed upon tissue in the open space (Fig. 7).

Additionally, the Examiner provided that one reference had not been considered because a date was not provided. The date for "Abstract. 'Closed Chest Coronary Artery Bypass With Cardioplegic Arrest in the Dog,' Stevens et al. 67th Scientific Sessions" should be "Nov. 14-17, 1994."

In the Official Action, the priority data in the first line of the specification was requested to be updated. Applicants amended the first line of the specification as indicated above, and request that such amendment be entered.

In the Official Action, the Examiner provided that the priority claim included an unclear claim to priority to provisional applications that appeared to be abandoned before the filing of the application. The provisional applications listed were claimed with regard to priority by the

parent case to the present case, which has serial number 09/879,293 or Patent No. 6,676,597. Application having serial number 09/879,293 was filed within one year of each filing of the subject provisional applications, and the provisional applications were never expressly abandoned. Therefore, claiming priority to such provisional applications should be deemed proper in this case.

Claims 10-15, 19-23, 27-31 were rejected under 35 U.S.C. 103(a) as being unpatentable over Spence et al. (U.S. 6,019,722, hereinafter "Spence") in view of Hamilton et al. (U.S. 5,885,271, hereinafter "Hamilton").

Regarding the rejection of record based upon Spence in view of Hamilton under section 103(a), it is submitted that invention(s) in claims 10-15, 19-23 and 27-31 is(are) patentably distinct. Spence teaches a heart retractor that permits regional and specific immobilization of the heart while still allowing the heart to beat (col. 9, lines 4-10). The retractor includes a gross support means for engaging the apex of a heart, with the gross support means preferably including a cup-shaped portion (col. 9, lines 10-20). The retractor further includes a fine support means including a plurality of rigid arms and a plurality of flexible arms for immobilizing portions of the heart (col. 9, lines 36-64). The ends of the arms may include suction cups or other means for attaching to the heart (col. 9, lines 39-42, 48-56, 63-64). As seen in Figure 3 of Spence, the arms are separate. Each arm may individually apply suction and have an area between the suction cup and surface area in which a vacuum may be applied. Spence does not disclose or show a flange along an outer margin of all the arms together to seal the arms to the heart using a single vacuum defined between the device and the surface of the heart. Each arm is described as possibly having a single vacuum.

Hamilton does not remedy the shortcomings of Spence. Hamilton teaches a unibody device for immobilizing compliant material (e.g., a region of a beating heart) (col. 3, line 66-col. 4, line 4). The unibody device may include two or more rigid arms that are positioned to surround a particular region for immobilization (col. 4, lines 13-18). Hamilton does not disclose resiliently-flexible legs, nor legs that include a flange along their outer margin to define a vacuum. Accordingly, it is submitted that Spence in view of Hamilton do not render claims 10-15, 19-23 and 27-31 obvious. Although Applicants believe that what was provided in original claim 10, 19 and 27 was patentably distinct from the references, the amendment of the claims further clarifies that a single vacuum volume is formed between the legs, surface of the heart and the flange (claim 10) or peripheral sealing portion (claims 17, 21), with the flange or peripheral

sealing portion extending around the legs and the vacuum. As such, it is respectfully requested that the 103(a) rejection be withdrawn.

Claims 1-34 have been rejected under obviousness-type double patenting with respect to claims 1-5, 9-12, 15-31 and 33 of U.S. Patent No. 6,676,597. Also, claims 1-34 are provisionally rejected under obviousness-type double patenting with respect to claims 1-41 of co-pending application having serial number 10/654,040.

Regarding the non-statutory obviousness-type double patenting rejection and provisional rejection, Terminal Disclaimers are enclosed and timely filed with this response in compliance with 37 C.F.R. 1.32(c) to be fully responsive to the rejection and provisional rejection. Thus, the non-statutory obviousness-type double patenting rejection and provisional rejection of original claims 1-34 will be overcome by duly executed Terminal Disclaimers, as will follow as soon as such are obtained.

It is submitted that claims 1-34 are currently in condition for allowance, a notice of which is earnestly solicited. If the Examiner finds any issue remaining after consideration of this response, the Examiner is invited to contact the undersigned, at the Examiner's convenience, in order to expedite any remaining prosecution.

Respectfully Submitted,

By:



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